

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHERENE RANDLE,

No. C 12-06031 JSW

Plaintiff,

**ORDER DISCHARGING ORDER
TO SHOW CAUSE AND ISSUING
FURTHER ORDER RE SUBJECT
MATTER JURISDICTION AND
VACATING HEARING DATE**

v.

WELLS FARGO BANK NA,

Defendant.

On January 8, 2013, this Court issued an Order to Show Cause why this case should not be dismissed for failure to prosecute. Plaintiff has filed a timely response to that Order, in which she advises the Court that she intended to amend her complaint, pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), and explains the reasons for failing to do so in the time required by Rule 15. Defendant, Wells Fargo Bank, N.A. ("Wells Fargo Bank") opposes Plaintiff's request, and argues Plaintiff has not shown good cause for leave to amend under Rule 15(a)(2).

The Court has considered Plaintiff's request and Wells Fargo's opposition thereto, and it discharges the Order to Show Cause without imposing sanctions. The Court DENIES the pending motion to dismiss without prejudice (Docket No. 6), and it VACATES the hearing date scheduled for February 8, 2013.

The Court notes that there may be an issue as to whether it has subject matter jurisdiction over this action. Defendant Cal-Western Reconveyance Corporation ("Cal-Western") is a non-diverse defendant, and it has not filed a declaration of non-monetary status. Wells Fargo Bank argues that Cal-Western has been fraudulently joined to defeat diversity

1 jurisdiction. Plaintiff has not moved to remand, and based on the response to the Order to Show
2 Cause, it appears that she did not intend to do so.

3 If Plaintiff does not intend to remove Cal-Western as a Defendant, and if she disputes
4 that Cal-Western is fraudulently joined, she shall file a motion to remand by January 25, 2013,
5 and notice that motion for an open and available date on this Court's civil law and motion
6 calendar.

7 If Plaintiff intends to remove Cal-Western as a Defendant, the Court shall grant the
8 request to file an amended complaint, in light of the preference for resolving cases on their
9 merits and the liberal standards of Rule 15(a)(2). Plaintiff shall file her amended complaint by
10 no later than January 25, 2013.

11 If Plaintiff does not intend to remove Cal-Western as a Defendant but does not file a
12 motion to remand, the Court shall conclude that she does not dispute that Cal-Western has been
13 fraudulently joined and should be ignored for purposes of determining whether diversity
14 jurisdiction exists. Again, in light of the preference for resolving cases on their merits and the
15 liberal standards of Rule 15(a)(2), the Court will grant Plaintiff's request for leave to file an
16 amended complaint.

17 If Plaintiff files an amended complaint, Defendants shall file a responsive pleading or
18 otherwise respond within twenty-one days thereafter.

19 **IT IS SO ORDERED.**

20 Dated: January 17, 2013

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23 JEFFREY S. WHITE
24 UNITED STATES DISTRICT JUDGE
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